



NEWS FROM THE HR TEAM



Religious discrimination; which motive of belief is considered to be justified?



In the case of *Gan Menachem Hendon Limited v de Groen*, the EAT has held that it was not discrimination on the grounds of religion or belief for an ultra-orthodox Jewish nursery to dismiss a teacher for refusing to lie to parents, when it discovered that she was cohabiting with her boyfriend.

The EAT considered the *Lee v Ashers Baking case* and confirmed that the motive for the discrimination is immaterial and must be based on the victim's beliefs (not the discriminator's, providing they would act in the same way regardless of who is affected). It held that the unfavourable treatment was on the grounds of the nursery's beliefs, rather than the teacher's, and so it was not discrimination on the grounds of religion or belief.

However, as the nursery had questioned her about her plans for marriage and children, this tended to show that the employee's plans to have children outside of marriage was a significant influence in the decision to dismiss and so the teacher's claim for sex discrimination was upheld.



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Online Right To Work Check now available

From 28 January 2019, you can rely on the online right to work checking service in certain cases to show compliance with illegal working legislation, without the need to also check a new employee's physical documents. However, make sure you conduct your own check using the correct employer page on GOV.UK and you'll first need the employee's consent.



New statutory Compensation Limits

The **Employment Rights (Increase of Limits) Order 2019** will increase the maximum amount of a "week's pay" from £508 to £525 from 6 April 2019. A week's pay is used to calculate statutory redundancy pay, as well as payments to employees in the event of insolvency and various tribunal awards, including the unfair dismissal basic and additional awards.

The other key increases are:

- the limit on the daily amount of statutory guarantee pay will increase from £28 to £29
- the limit on the amount of the unfair dismissal compensatory award will rise from £83,682 to £86,444 (there is an additional cap of one year's gross salary on the compensatory award)
- the minimum basic award for certain unfair dismissals, such as dismissals due to trade union membership or activities, for carrying out activities as health and safety or employee representative or for carrying out duties as an occupational pension scheme trustee, will go up from £6,203 to £6,408.

The increases apply where the event giving rise to the entitlement to compensation or other payment occurred on or after 6 April 2019. The sums previously in force under the 2018 Order will continue to apply where the relevant event was before 6 April 2019.

The main changes are:

- The amount of a "week's pay" for calculating statutory redundancy pay and certain unfair dismissal awards is to go up from £508 to £525 from 6 April 2019.
- The maximum unfair dismissal compensatory award will increase from £83,682 to £86,444 and the limit on the daily amount of statutory guarantee pay is to rise from £28 to £29.

New Government published guidance to help Employers calculate holiday pay entitlement for Employees who do not work fixed hours or with fixed rates of pay

The Government has published the Good Work Plan in December 2018 to boost awareness of Holiday Pay Rights.

The guidance covers:

- the twelve-week holiday pay reference period and what to do if you don't have twelve weeks of pay data to use
- the definition of a week for the purposes of the holiday pay reference period
- the date a holiday pay reference period should start from
- working out holiday pay for monthly paid workers
- calculating holiday pay for workers with irregular hours or those on zero-hours contracts
- the rules for workers on short contracts or temporary workers
- dealing with different periods of leave which have included unpaid leave during the holiday pay reference period

- differences between the right to paid holiday derived from EU legislation compared to UK legislation
- differences in treatment between EU and UK legislation when calculating holiday pay
- calculating holiday pay for those leaving a job
- calculating holiday pay for term-time workers
- when to pay a worker for holidays they have taken

There's also a section summarising the case law regarding holiday pay. In addition to the guidance, there's an online holiday calculator which you can use to calculate the holiday entitlement for a worker on an irregular hours, temporary or zero-hours contract.

For any support you may need with calculating holiday pay under these new guidelines, please contact one of our HR Specialists.



Employers must take a zero-tolerance approach to any kind of harassment or bullying, including on racial grounds



This is essential for Employee relations, but also from a legal perspective. The **Equality Act 2010** provides that anything done by an individual in the course of their employment “must be treated as also done by the employer”.

In practice, this means you can be vicariously liable for the acts of your employees which are in breach of discrimination laws, including acts of harassment and bullying. It’s irrelevant that you had no knowledge of what was going on; you can still be liable for the employee’s acts where they’re regarded as having been carried out in the course of employment.

However, the Act also states that it’s a defence for you to show that you took “all reasonable steps” to prevent the individual from doing the act of harassment or bullying, or from doing anything of that description. Unfortunately, merely having a robust dignity at work policy in a staff handbook isn’t going to be enough on its own to jump this high hurdle.

An employment tribunal will look at what steps you took to prevent the employee from carrying out the act of harassment or bullying and then it will consider whether they were any further steps you could have taken that it would have been reasonable to take.

This is where training comes in, with the aim of preventing any harassment or bullying from happening in the first place, rather than just focusing your efforts on trying to sort the issue out after the harassment or bullying has come to light.

Make sure you have a dignity at work policy in place that staff are aware of and have ready access to and why not try our Online Training modules?

Are WhatsApp and other social media platforms beneficial for work communications between employees?

A survey released by Speakap in January 2019 found that over half of the employees surveyed used these types of platforms for work related communications without the knowledge of their employer.

Employers are at risk where such platforms become a work-related forum, as it is integrated in daily working life for work related. Employers can then become liable for the types of communications which occur on these forums such as;

- the sharing of sexually explicit material
- discriminatory, offensive or bullying behaviour
- Equally, as messaging apps enable 24/7 communication, it can become difficult

for an employee to completely switch off from work. Where down time is interrupted, not only are there potential health consequences for the employee, there could inadvertently be a breach of the statutory rules on rest breaks.

- Personal data may be shared via these messaging apps, potentially breaching GDPR Regulations.
- It would difficult to obtain a full paper trail is required for any issues which may arise from these messaging apps, as required for Tribunals or Court.



We recommend that employers consider;

1. Banning or restricting the use of messaging apps for work-related purposes. This is a sensible approach, particularly as it removes all the GDPR risks.
2. Prohibiting employees from using messaging apps to discuss work-related matters without your permission and make it a disciplinary offence if they do this.



Key changes in April 2019

National minimum wage and national living wage

The **National Minimum Wage (Amendment) Regulations 2019** will increase the various rates of the national minimum wage (NMW) and national living wage (NLW) as follows:

- the NLW for workers aged 25 or over will increase to £8.21 per hour
- the NMW standard rate for workers aged 21 to 24 will increase to £7.70 per hour
- the NMW development rate for workers aged 18 to 20 will increase to £6.15 per hour
- the NMW young workers rate for those aged 16 and 17 will increase to £4.35 per hour
- the NMW apprenticeship rate will increase to £3.90 per hour

Apprenticeship levy

The co-investment rate for non-levy employers will be cut by a half from 10% to 5%, meaning that government funding available for apprenticeships for smaller employers will rise to 95% of the cost. In addition, levy-paying employers will be able to share a greater portion of their levy funds across their supply chains, with the maximum amount rising from 10% to 25%.

Family-related pay and sick pay

The **Social Security Benefits Up-rating Order 2019** will increase the standard weekly rates of statutory maternity pay (SMP), statutory adoption pay (SAP), statutory paternity pay (SPP) and statutory shared parental pay (ShPP) from £145.18 to £148.68 for pay weeks commencing on or after 7 April 2019 and will increase the weekly rate of statutory sick pay (SSP) from £92.05 to £94.25 from 6 April 2019.

In addition, the **Social Security (Contributions) (Rates, Limits and Thresholds Amendments and National Insurance Funds Payments) Regulations 2019** will increase the earnings threshold, below which employees are not entitled to SMP, SAP, SPP, ShPP and SSP, from £116 to £118 per week from 6 April 2019

Pensions

The Automatic Enrolment (Earnings Trigger and Qualifying Earnings Band) Order 2019 maintains the automatic enrolment earnings trigger at £10,000 for tax year 2019/20 and increases the qualifying earnings band for contributions to maintain alignment with the National Insurance lower and upper earnings limits.

The lower limit of the band will increase from £6,032 to £6,136 and the upper limit will increase from £46,350 to £50,000. In addition, the employer's minimum contribution to a workplace pension scheme will increase from 2% to 3% and the worker's minimum contribution will increase from 3% to 5%.

Itemised pay statements

The Employment Rights Act 1996 (Itemised Pay Statement) (Amendment) (No.2) Order 2018 will give the right for all workers to be provided with an itemised pay statement at or before the time at which any wages are paid to them (this right currently only applies to employees).

In addition, the Employment Rights Act 1996 (Itemised Pay Statement) (Amendment) Order 2018 will require that, where the amount of wages the worker receives varies by reference to time worked, the pay statement must contain information regarding the total number of hours worked by them for which they're being paid, either as a single aggregate figure or as separate figures for different types of work or different rates of pay.

Aggravated breach penalties

The Employment Rights (Miscellaneous Amendments) Regulations 2019 will increase the maximum financial penalty that can be imposed on an employer by an employment tribunal for an aggravated breach of employment law from £5,000 to £20,000.

Eligible EU/EEA/Swiss citizens who are currently living in the UK will be able to apply for settled or pre-settled status under the EU Settlement Scheme from 30 March 2019; whether or not the UK leaves the EU with a deal.